

**BEFORE THE MISSISSIPPI BOARD OF PSYCHOLOGY**

**IN THE MATTER OF:**

**GILBERT S. MACVAUGH, III,**

**RESPONDENT**

**NOS. 20190826 and 20190911**

**FINAL ORDER**

THIS MATTER came before a quorum<sup>1</sup> of the Mississippi Board of Psychology ("the Board") on December 3, 2021 to determine whether Gilbert S. Macvaugh, III, the Respondent herein, has violated rules, regulations, standards of practice and/or rules of ethics governing licensed psychologists as would warrant the Board's refusal to reinstate Respondent's license to practice psychology in the State of Mississippi. A quorum of the Board members was present throughout the hearing and separate deliberations in this matter.

Respondent was present for the hearing, represented by the Hon. William C. Bell. The Board was represented by Special Assistant Attorney General Alexis E. Morris, who serves as legal counsel to the Board and presented the charges against Respondent.

Pursuant to Title 30, Part 3201<sup>2</sup>, Chapter 7, Rule 7.5(C)(1), the Board appointed Assistant Attorney General Kim Turner to serve as the Administrative Hearing Officer, who presided at the hearing over the objection of Respondent and was directed to prepare the Board's written decision following the hearing's conclusion. Having heard the testimony of the witnesses and reviewed the exhibits and evidence presented, the Board makes the following findings of fact, conclusions at law and final decision.

**FINDINGS OF FACT**

1. The Board, established by Miss. Code Ann. § 73-31-5, as amended, is charged with the duty of regulating the practice of psychology, "to protect the people of this state against the unauthorized, unqualified and improper application of psychology." *Miss. Code Ann. § 73-31-1*.

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<sup>1</sup> The Board members present during the December 3, 2021 hearing were Dr. Molly Clark, Dr. Steve Ellis, Dr. Lynwood Wheeler, Dr. Natalie Gaughf and Dr. Monica Sutton.

<sup>2</sup> *Title 30, Part 3201* hereinafter shall be referred to as the Board's Administrative Rules followed by the citation to the specific rule.



2. The Board issued License No. 46 758 to Respondent on or about November 3, 2006. Respondent intentionally and deliberately chose not to renew his license and therefore allowed his license to expire in July 2019.

3. By letter dated January 7, 2021, Respondent made a written request to the Board for reinstatement of his license to practice psychology in the state of Mississippi. (Exh. B-3).

4. Respondent was served with and received the Board's Notice of Hearing and Complaint dated March 16, 2021 in accordance with Miss. Code Ann. § 73-31-21(2). Though the hearing was originally scheduled for April 23, 2021, it was later rescheduled for June 25, 2021.

5. On June 25, 2021, both parties presented for the hearing, as did the Administrative Hearing Officer. Following introduction of the members of the Board and brief opening remarks by the hearing officer, Respondent objected to the hearing officer presiding over the hearing, alleging that the common employer of the hearing officer and Board counsel constituted a conflict of interest. The objection was overruled by the hearing officer.

6. Respondent next objected to the form of the Board's Complaint, specifically the acknowledgement of the Executive Director's signature which erroneously referred to the signature of Lee Ann Mordecai, Executive Director of the Mississippi State Board of Examiners for Licensed Professional Counselors. After hearing the argument of counsel, the objection was overruled by the hearing officer.

7. Respondent lastly requested a continuance based upon the Board's refusal to grant him an informal conference pursuant to Rule 7.3(C) of the Board's Administrative Rules and upon a Motion for a Continuance to Conduct Discovery which filed with the Board on June 24, 2021, and which was based upon the June 21, 2021 filing of a Complaint for Discovery in the Chancery Court of Hinds County, Mississippi. (Exh. B-6). The hearing was briefly adjourned, during which time the Board entered into an Executive Session to discuss and deliberate Respondent's requested continuance. Upon returning to an open session and the record, the Board's decision to grant Respondent's Motion for a Continuance was announced. The hearing was to be rescheduled for a date after final disposition of Respondent's Chancery Court action for discovery.

8. Respondent received a Courtesy Notice dated October 29, 2021 by which he was provided written notice of the date, time, and location for the hearing, now scheduled following the disposition of his Chancery Court action for discovery for December 3, 2021. *See*, Exh. B-7. His counsel was likewise provided a copy of the Courtesy Notice by e-mail dated October 29, 2021. (Exh. R-1).



9. Following introduction of the members of the Board and brief opening remarks by the hearing officer, Respondent renewed his objection to the hearing officer presiding over the hearing, again alleging a conflict of interest arising from the hearing officer and Board counsel both working for the Office of the Attorney General. After hearing the argument of counsel, the objection was overruled.

10. Documents were exchanged and reviewed by counsel before proceeding with the hearing. Upon agreement, Exhibits B-1 through B-8 were entered into evidence by the Board, and Exhibits R-1 through R-7 and R-11 were entered into evidence by Respondent. Respondent's Exhibits R-8 through R-10 were marked for identification purposes only, but not entered into evidence.

11. The Board received three (3) separate charges requesting its investigation into specific allegations against Respondent. In accordance with Rule 7.2 of the Board's Administrative Rules, each charge was referred to the Secretary of the Board, Dr. Lisa Yazdani at the time, for investigation. While each investigation revealed sufficient information upon which the Board may have proceeded with the filing of a formal Complaint against Respondent, no such Complaint was filed at that time as Respondent's license had expired, without request for renewal.

12. Upon Respondent's request for reinstatement of his license, the Board filed its formal Complaint based upon the allegations of the three (3) separate charges and Dr. Yazdani's investigations. (Exh. B-1 – B-3).

13. The formal Complaint set forth three (3) separate Counts, each based upon a respective charge and alleged Respondent to have violated numerous American Psychological Association Ethical Principles of Psychologists and Codes of Conduct. (Exh. B-1).

14. On or about March 9, 2021, Marilyn Trahan provided narratives of charges against Respondent, which she requested the Board investigate. (Exh. B-1). Respondent was provided with written notice of the Board's receipt of those charges by correspondence dated March 10, 2021, to which he responded by a formal pleading filed with the Board on or about April 8, 2021. (Exh. B-4)

15. The charges made by Marilyn Trahan and additional information discovered through the Board's investigation of those charges formed the basis of Count I of the Board's Complaint against Respondent.

16. Ms. Trahan was called as a witness by the Board to substantiate and prove the allegations of Count I. Ms. Laura Egger Buchberger and Dr. Ed Egger were called as witnesses by Respondent to offer testimony in defense against the allegations of Count I. Respondent also offered testimony in defense against these allegations. The Board did not find the evidence related to the allegations of Count I credible.

17. On or about August 28, 2019, John C. Gerger alleged Respondent failed to complete and/or produce a psychological evaluation of Mr. Gerger's then-wife, Lisa Gerger, to the Chancery Court of Hancock County in connection with divorce and child custody proceedings. Mr. Gerger further complained of Respondent's failure and/or refusal to communicate with him regarding the status of the psychological evaluation. Mr. Gerger requested the Board initiate an investigation into those charges made against Respondent. (Exh. B-1).

18. The charges made by Mr. Gerger and additional information discovered through the Board's investigation of those charges formed the basis of Count II of the Board's Complaint against Respondent.

19. Mr. Gerger was called as a witness by the Board to substantiate and prove the allegations of Count II. Respondent offered his testimony and Exhibits R-2 through R-4 in defense against these allegations. The Board did not find the evidence related to the allegations of Count II credible.

20. Count III of the Board's Complaint was based upon Respondent's failure and/or refusal to provide a mental health assessment to the Circuit Court of Rankin County, for which he was retained by the State of Mississippi. Respondent's failure and/or refusal to provide the mental health assessment to the Court resulting in the imposition of sanctions against Respondent for his "willful failure(s)" to comply with orders of the Court and personally appear, pursuant to a subpoena, before the Court on May 7, 2018. *See, Devin Allen Bennett v. State of Mississippi*, Rankin County Cause No. 2008-234C. (Exh. B-1).

21. While exhibits were entered into evidence relevant to Count III, Respondent was the only witness who offered testimony, specifically in defense against these charges. *See*, Exh. B-3, R-4, and R-7.



Based on the foregoing Findings of Fact, the Board makes the following Conclusions at Law:

### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction over the Respondent and the subject matter herein. Venue is likewise proper in Jackson, Hinds County, Mississippi.
2. Administrative hearings are not trials and are not governed by the same rules which would apply in courts of law.
3. Miss. Code Ann. § 73-31-7(2)(a) authorizes the Board to adopt such rules and regulations as it finds necessary to conduct the business of the Board and to carry into effect the provisions of Title 73, Chapter 31, Miss. Code Ann.
4. This matter was duly and properly convened, and all procedural requirements prescribed by statute and administrative rule were satisfied.
5. Respondent was properly served with Notice of Hearing and the Complaint in accordance with Miss. Code Ann. § 73-31-21(2) and Rule 7.3(A) of the Board's Administrative Rules.
6. The presumption exists that hearing officers and Board members behave honestly and fairly in the conduct of hearings and in the decision-making process. *United Cement Company v. Safe Air for the Environment, Inc.*, 558 So. 2d 840 (Miss. 1990).
7. Though the allegations of the Complaint were presented by a Special Assistant Attorney General on behalf of the Board, the appointment of an Assistant Attorney General, in accordance with Rule 7.5(C)(1) of the Board's Administrative Rules, to serve as the hearing officer did not inherently create or constitute a conflict of interest. *See, United Cement Company*, 558 So. 2d at 842 (We see no suggestion or partiality or impropriety in the use of an assistant attorney general as a hearing officer. That office affords counsel to state agencies, and we see no conflict or suggestion of unfairness in this arrangement.)
8. Pursuant to Rule 7.3(C) of the Board's Administrative Rules, Respondent was not entitled to an informal conference, despite his request for the same.
9. The Board may, pursuant to Miss. Code Ann. § 73-31-21, withhold, deny, revoke, or suspend any license issued or applied for in accordance with the provisions of Title 73, Chapter 31, and otherwise discipline a licensed psychologist upon presentment of the requisite proof as provided by Miss. Code Ann. § 73-31-21(1).

10. The allegations of Count I of the Complaint, based upon the charge(s) of Marilyn Trahan, were not proven by clear and convincing evidence.

11. The allegations of Count II of the Complaint, based upon the charge(s) of John Gerger, were not proven by clear and convincing evidence.

12. The allegations of Count III of the Complaint, based upon the Orders of the Rankin County Circuit Court in the case of *Bennett v. State*, in which Respondent was retained by the State of Mississippi, were established, and proven by clear and convincing evidence.

13. Based upon the clear and convincing evidence, Respondent violated Miss. Code Ann. § 73-31-21(1)(a) and the American Psychological Association Ethical Principles of Psychologists and Code of Conduct.

Based upon its Findings of Fact and Conclusions at Law, the Board finds the following order to be appropriate under the circumstances

### **ORDER**

**IT IS THEREFORE ORDERED** that, Respondent's request for reinstatement of License No. 46758 be denied.

**FURTHER ORDERED** that, should Respondent apply for a new license to practice psychology in the state of Mississippi, Respondent must have completed, at the time of application, at least twenty (20) hours of continuing education focused upon impairment, ethics and professionalism and a personal and professional improvement program such as that offered by Pine Grove Behavioral Health and Addiction Services in Hattiesburg, Mississippi, such facility and program to have been pre-approved by the Board.

**FURTHER ORDERED** that, should the Board issue Respondent a new license to practice psychology in the state of Mississippi, Respondent's practice shall be subject to supervision, with a focus upon impairment, ethics, and professionalism, by a psychologist licensed in the state of Mississippi to be pre-approved by the Board, for such period of time as shall be determined by the Board, and subject to such other conditions as may be deemed appropriate at that time by the Board.

**FURTHER ORDERED** that, this decision and opinion shall be a final order of the Board and shall be conclusive evidence of the matters described herein.

**FURTHER ORDERED** that this action and order of the Board shall be public record. It may be shared with other licensing boards (in- and out-of-state) and the public and may be reported to the appropriate entities as required or authorized by



state and/or federal law or guidelines. This action shall be spread upon the Minutes of the Board as its official act and deed.

**FURTHER ORDERED**, Respondent shall be taxed with all costs of the Board's investigation, prosecution, and adjudication of this matter pursuant to Miss. Code Ann. § 73-31-21(1)(j).

**FURTHER ORDERED** that upon execution of this Final Order by affixing the authorized signature below, the provisions of this Final Order shall become the final order of the Board.

**SO ORDERED** this, the 24<sup>th</sup> day of January 2022.

**MISSISSIPPI BOARD OF PSYCHOLOGY**

By:   
**STACIE SHARP, EXECUTIVE DIRECTOR**

Prepared by:

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